IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

CRL.A.No. 449 of 2002()

SC.265/2000 of ADDL. SESSIONS COURT (ADHOC-I), THRISSUR

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APPELLANT: ACCUSED

SIVADAS, S/O.MANATHIL RAMACHANDRAN,
KUNDNASSERY VILLAGE AND DESOM,
TALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A.No.449 of 2002 (B)

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Dated this the 20th day of March, 2007

J U D G M E N T

On 27/10/1997, PW.4, the Preventive Officer of Excise Range, Kunnamkulam, detected eight bottles of Indian Made Foreign Liquor, Three Roses XXX rum, each bottle containing 375 ml, and two bottles of King Fisher beer of 650 ml each, without any authorisation to possess the same. Therefore, the accused was arrested and the contraband seized. Exhibit P1 is the seizure mahazar, prepared by PW.4 and attested by PWs.2 and 3. PW.1 is another Preventive Officer, who accompanied PW.4. PW.5 is the Excise Inspector, before whom the accused was produced by PW.4. The permissible quantity at that time was only 1.5 litres. The total quantity of rum, possessed by the accused, was three litres. Therefore, the accused was arrested and Exhibit P7 occurrence report was filed. Exhibit P8 notice was given to the relatives of the accused, intimating his arrest and PW.6 has proved the same. On completion of the investigation, PW.5 laid the final report under Sections 55(a)

and (i) of the Abkari Act, in short 'the Act', for having possessed and sold the same. Exhibit P6 chemical analysis report was also produced before the court below, which reveal that one bottle of Three Roses XXX rum and another bottle of King Fisher beer were sent for chemical analysis. In the sample of rum, the chemical examiner detected 42.11% by volume of ethyl alcohol and, in beer, 3.92% of ethyl alcohol was detected.

2. To prove the offence, the prosecution examined six witnesses and marked eight documents. Two material objects were also marked. There was no defence evidence. The court found the accused guilty of the offence punishable under Section 55(a) and 55(i) of the Act and, therefore, convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of rupees one lakh, in default to further undergo rigorous imprisonment for six months each under both the Sections of 55(a) and (i) of the Act. Set off was allowed under Section 428 of the Code of Criminal Procedure. The sentences were directed to run concurrently. Hence, this appeal by the convicted accused.

3. The main contention of the appellant is that under Exhibit P6 chemical analysis report, only one bottle of 375 ml rum and one bottle of 650 ml beer had been tested. The other bottles had not been tested to conclude whether they were of Three Roses XXX rum and King Fisher beer, having seized and established against the appellant, so as to allege that he was in possession of the liquor, in excess of the permitted quantity.

4. The prosecution concedes that the permitted quantity, at the relevant period for rum was 1.5 litres and beer was 4.5 litres. This Court in **Krishnankutty vs.State of Kerala** [2005 (3) KLT 568] held that it is the duty of the prosecution to establish that the liquor seized from the accused, is in excess of the quantity permitted to be possessed by the accused, from whose possession, the seizure took place. In the instant case, the prosecution had established that the accused possessed liquor, as defined under Section 3(10) of the Act, only 375 ml of Three Roses XXX rum and 650 ml of two bottles of King Fisher beer. Therefore, it cannot be accepted that the prosecution had seized eight bottles of Three Roses XXX rum and, two bottles of King Fisher beer whereas the tested quantity comes only to

a total of 1.025 litres, within the permitted quantity. Therefore, the conviction of the accused for having possessed liquor in excess of the permitted quantity cannot be sustained.

5. In view of the above principle, the impugned judgment, dated 22/05/2002, of III Additional Sessions Court (Ad hoc) Fast Track Court-I, Thrissur, is set aside. The conviction and sentence passed by the court below is set aside. The appellant-accused is set at liberty, cancelling his bail bond.

The appeal is allowed as above.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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J U D G M E N T

20th March, 2007